IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY FIFTH DAY MARCH
TWO THOUSAND AND FOUR
: PRESENT :
THE HON'BLE MR. JUSTICE : P.S.NARAYANA

C.M.P.Nos.25709 of 2003 C.M.P.No.4720 OF 2004

C.M.P.No.1206 of 2003

Between:
M/s.Mahendra Synthetics, rep.by its Proprietor
Sri.Mahender kumar, S/o Shiva Shanker,
R/o.3-2-326, Pannalal Building,
Chappal Bazar, Hyderabad-27.

Petitioner in CMP.No.2509 /2003
And respondent in CMP No.4720/04
Appellant in CCCA. No.355/03
on the file of the High Court)

AND

M/s.Shankerlal Tarachand,
Rep.by its proprietor
Sri V.K.Goyal, S/o.Tarachand Goyal,
R/o.21-1-714/3, Rikabgunj, Hyderabad.

Respondent in
CMP No.24709/03 and Petitioner in
CMP No.4720/04.

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to stay theexecution of the decree dt.18-08-2003 passed in OS.No.1753/94, on the file of lthe court ofHonourable II Senior Civil Judge,City Civil Court, Hyderabad, pending disposal of the above CCC appeal No.3555/03 preferred there from to this Honourable Court.

C.M.P.No.4720of 2004

Petition under Section 151 of CPC praying that in the circumstances stated in the counter affidavit filed in CMP.No.4720 /2004, the High Court will be pleased to vacate the stay directed by the order of the High Court dated 10-11-2003 and made in C.M.P. No.25709 of 2003.

Continued…

These petitions coming on for hearing, upon perusing the petitions and the affidavit filed in CMP.No.25709 /2003 and the interim order of the High Court dated 10-11-03 and made therein and the counter and reply affidavits filed therein and upon hearing the arguments of Mr.M.V.S.Suresh Kumar, Advocate for the Petitioner in C.M.P. No.25709 /2003 Respondent in CMP.No.4720/2004 and of Mr.Vilas V.Afzulpurkar, Advocate for the Respondent in CMP.No.25709/2003 and Petitioner in CMP . No. 4720/2004.

The Court made the following : ORDER :

Heard both the counsel.

This application is filed to vacate the interim stay granted bykl this court on 10-11-03 in CMP 25709/03.

Sri M.V.S.Suresh Kumar, Counsel representing the appellant would submit that though nothing is payable and there is no evidence to substantiate the claim of the plaintiff ,the trial Court had decreed the Suit. The learned counsel would maintain that even other wise the plaintiff herein has no capacity or means and in the event of this court directing deposit of the decretal amount and permitting the plaintiff to withdraw the same, ultimately even if the appellant is successful in the appeal, the appellant would not be able to realise any amount whatsoever.

Having learned both the counsel, and also in the light of the averments made in the counter affidavit filed in support of the application, I am of the considered opinion that the interim stay already granted is liable to be made absolute, and however with certain

conditions.

In view of the peculiar facts and circumstances of the case, interim stay is made absolute subject to the condition that the appellant herein shall deposit 1/3rd of the decretal amount and costs within a period of four weeks and on making such deposit, the respondent/plaintiff is at liberty to withdraw the same on furnishing security to the satisfaction of II Senior Civil Judge, City Civil Court, Hyderabad.

Sd/- K.VIVEKANAND
ASSISTANT REGISTRAR
// TRUE COPY //

For Asst.Registrar

To,

1. The Senior Civil Judge, Gooty, Ananthapur District
2. one spare copy.

Jsw

HIGH COURT

EDR J

DATE: 25-3-2004

NOTE: EXPEDITE HEARING OF APPEAL

ORDER
CMP NO.1206 OF 2003 AND

6414 OF 2004